



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 9

RIN 2900-AN40

Servicemembers' Group Life Insurance and Veterans' Group Life Insurance--

Slayer's Rule Exclusion

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs ("VA") proposes to amend its regulations governing Servicemembers' Group Life Insurance ("SGLI") and Veterans' Group Life Insurance ("VGLI") to prohibit payment of insurance proceeds payable because of the death of a person whose life was insured under SGLI or VGLI ("decedent") or payment of a SGLI Traumatic Injury Protection ("TSGLI") benefit to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent ("slayer"); a member of the slayer's family who is not related to the decedent by blood, legal adoption, or marriage; and a member of the slayer's family who is related to the decedent by blood, legal adoption, or marriage and who is convicted of a crime involving the intentional killing of the decedent or found in a civil proceeding to have been involved in the intentional killing of the decedent.

DATES: Comments must be received by VA on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER.]

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., N.W., Room 1068, Washington, D.C. 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN40-- Servicemembers' Group Life Insurance and Veterans' Group Life Insurance-- Slayer's Rule Exclusion." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA proposes to amend 38 CFR 9.5 to prohibit payment of the proceeds of SGLI or VGLI or a TSGLI benefit to: (1) a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent; (2) a member of the

slayer's family who is not related to the decedent by blood, legal adoption, or marriage; and (3) a member of the slayer's family who is related to the decedent by blood, legal adoption, or marriage and is convicted of a crime involving the intentional killing of the decedent or determined in a civil proceeding to have been involved in the intentional killing of the decedent.

A Servicemember insured under SGLI or a Veteran insured under VGLI has the right to designate the beneficiary or beneficiaries of the policy. See 38 U.S.C. 1970(a). Although proceeds of SGLI in force on an insurable dependent of a Servicemember on the date of the dependent's death are paid to the Servicemember, if the Servicemember dies before payment can be made, the proceeds are payable to the person or persons entitled to receive the proceeds of the insurance on the Servicemember's life. 38 U.S.C. 1970(i). If a Servicemember or Veteran does not designate a beneficiary, no designated beneficiary survives the decedent, or payments are to be made by law, SGLI and VGLI proceeds are paid in the following order: (1) to the decedent's surviving spouse; (2) to the decedent's children and their descendants in equal shares; (3) to the decedent's parents in equal shares or to the survivor of them; (4) to the duly appointed executor or administrator of the decedent's estate; or (5) to other next of kin of the decedent. 38 U.S.C. 1970(a). Proceeds of TSGLI are also paid in accordance with this order of precedence if an insured Servicemember entitled to a TSGLI payment dies before payment is made. 38 U.S.C. 1980A(g)(2).

The statutes governing SGLI, VGLI, and TSGLI are silent with regard to whether a beneficiary who killed the decedent or a family member of such a

beneficiary may receive the proceeds of SGLI or VGLI or the TSGLI payment. The Federal common-law slayer's rule is a public policy that generally precludes killers from benefitting from their victims' deaths. Courts have applied the slayer's rule in resolving disputes over entitlement to SGLI proceeds. See Prudential Ins. Co. of Am. v. Athmer, 178 F.3d 473, 476 (7<sup>th</sup> Cir. 1999) (slayer's rule "is undoubtedly an implicit provision of the Servicemen's Group Life Insurance Act of 1965") (that Act created what is now known as SGLI); Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1380-81 (S.D. Ga. 2004). VA proposes to fill the gap in the statutes governing SGLI, VGLI, and TSGLI by adding paragraph (e) to 38 CFR 9.5 to codify the applicability of the slayer's rule to these VA insurance programs. See 38 CFR 3.11 (barring person who "has intentionally and wrongfully caused the death of another person" from entitlement to VA pension, compensation, or dependency and indemnity compensation by reason of such death); Lofton v. West, 198 F.3d 846, 850 (Fed. Cir. 1999) (finding § 3.11 to be "an entirely reasonable gap-filling measure"). New paragraphs (e)(1) and (e)(2)(i) would bar a person who is convicted of intentionally killing a decedent or determined in a civil proceeding to have intentionally killed the decedent entitlement to the SGLI or VGLI proceeds or a TSGLI payment. Rather than deal with different types of unlawful homicide and the unavoidable variance among different jurisdictions, we have chosen to generally designate the unlawful homicide that triggers the slayer's rule as "intentionally killing" the decedent. Jones v. Prudential Life Ins. Co., 814 F. Supp. 500, 501 (W.D. Va. 1993) ("The true test [of whether the slayer's rule

applies] is whether the beneficiary intentionally took the life of the insured.") (quoting Jackson v. Prudential Ins. Co. of Am., 254 A.2d 141, 147 (N.J. 1969)).

Some jurisdictions also disqualify members of a slayer's family, other than individuals also related to the victim, from receiving the proceeds of an insurance policy. This is known as the extended slayer's rule and has been applied to SGLI by a Federal court. Tolbert, 320 F. Supp. 2d at 1380, 1381-82. VA proposes to incorporate the extended slayer's rule in new § 9.5(e)(1) and (2)(ii) and (iii) "to prevent killers from receiving even the 'indirect benefits' of their wrongdoing" by receiving or inheriting, through relatives, the financial benefits of the killing. Id. at 1381 (quoting Beck v. Downey, 198 F.2d 626, 628 (9<sup>th</sup> Cir. 1952)); Athmer, 178 F.3d at 476-77. Section 9.5(e)(2)(ii) would bar a slayer's family member who is not related to the decedent by blood, legal adoption, or marriage from receiving SGLI or VGLI proceeds. Id. at 1381. Section 9.5(e)(2)(iii) would bar a slayer's family member who is related to the decedent by blood, legal adoption, or marriage from receiving SGLI or VGLI proceeds or TSGLI payment if the family member is convicted of a crime involving the intentional killing of the decedent or is determined in a civil proceeding to have been involved in the intentional killing the decedent. A new § 9.1(l) would define "member of the family" for purposes of § 9.5(e)(2)(ii) and (iii) to mean an individual with any of the following relationships to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent: (1) spouse; (2) biological, adopted, or step child; (3) biological, adoptive, or step parent; (4)

biological, adopted, or step sibling; (5) biological, adoptive, or step grandparent or grandchild; or (6) domestic partner.

Section 9.5(e)(3) would bar entitlement to SGLI or VGLI proceeds or a TSGLI payment to a person described in paragraph (2) or a member of that person's family described in paragraph (2) even though the criminal conviction or civil determination is pending appeal. See Webb v. Voirol, 773 F.2d 208, 211 (8<sup>th</sup> Cir. 1985); United Investors Life Ins. Co. v. Severson, 151 P.3d 824, 829-30 (Idaho 2007).

Section 9.5(e)(4)(i) would provide that, if a person is disqualified from receipt of SGLI or VGLI proceeds or a TSGLI payment under § 9.5(e)(1) and (2), the insurance proceeds or TSGLI payment would be paid in the following order of precedence: (1) to the next eligible beneficiary as designated by the servicemember or former servicemember; (2) to the decedent's surviving spouse; (3) to the decedent's child or children, in equal shares, and descendants of deceased children by representation; (4) to the decedent's parents, in equal shares, or to the survivor of them; (5) to the duly appointed executor or administrator of the decedent's estate; or (6) to the decedent's next of kin as determined by the Insurer under the laws of the decedent's domicile at the time of the decedent's death. Under § 9.5(e)(4)(ii), payment to any person under paragraphs (e)(4)(i) would bar recovery by any other person.

VA proposes that this rule would be applicable to any claim for SGLI or VGLI proceeds, including a claim for a payment under § 9.20, Traumatic injury protection, filed before the effective date of the rule that has not been paid as of

the effective date of this rule and to any claim filed on or after the effective date of the rule.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments or on the private sector.

#### Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result

in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 - 612. This proposed rule would directly affect only individuals and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.



Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 14, 2011, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: December 8, 2011

---

Robert C. McFetridge,  
Director of Regulation Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Amend § 9.1 by adding a new paragraph (I) to read as follows:

§ 9.1 Definitions.

\* \* \* \* \*

(I) The term member of the family as used in § 9.5(e)(2) means an individual with any of the following relationships to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent:

- (1) Spouse;
- (2) Biological, adopted, or step child;
- (3) Biological, adoptive, or step parent;
- (4) Biological, adopted, or step sibling;
- (5) Biological, adoptive, or step grandparent or grandchild; or
- (6) Domestic partner.

3. Amend § 9.5 by adding paragraph (e) to read as follows:

§ 9.5 Payment of proceeds.

\* \* \* \* \*

(e)(1) The proceeds payable because of the death of an individual insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance ("decedent") shall not be payable to any person described in paragraph (e)(2) of this section. A Servicemembers' Group Life Insurance Traumatic Injury Protection benefit payable under § 9.20(j)(3) shall not be payable to any person described in paragraph (e)(2) of this section.

(2) The persons described in this paragraph are:

(i) A person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent;

(ii) A member of the family of a person described in paragraph (e)(2)(i) of this section who is not related to the decedent by blood, legal adoption, or marriage; and

(iii) A member of the family of a person described in paragraph (e)(2)(i) of this section who is related to the decedent by blood, legal adoption, or marriage and who is convicted of a crime involving the intentional killing of the decedent or determined in a civil proceeding to have been involved in the intentional killing the decedent.

(3) The Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraph (e)(1) of this section to any person described in paragraph(e)(2) of this section is not payable to such

persons even though the criminal conviction or civil determination is pending appeal.

(4)(i) Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraphs (e)(1) and (e)(2) of this section shall be payable to the first person or persons listed in paragraphs (e)(4)(i)(A) through (F) of this section who are surviving on the date of the decedent's death in the following order of precedence:

(A) To the next eligible beneficiary designated by the decedent in a writing received by the appropriate office of the applicable uniformed service before the decedent's death in the uniformed services in the case of Servicemembers' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit, or in a writing received by the administrative office defined in § 9.1(b) of this part before the decedent's death in the case of Veterans' Group Life Insurance proceeds;

(B) To the decedent's surviving spouse;

(C) To the decedent's child or children, in equal shares, and descendants of deceased children by representation;

(D) To the decedent's parents, in equal shares, or to the survivor of them;

(E) To the duly appointed executor or administrator of the decedent's estate;

(F) To other next of kin of the decedent as determined by the insurer (defined in § 9.1(c) of this part) under the laws of domicile of the decedent at the time of the decedent's death.

(ii) Payment of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit to any person under paragraph (e)(4)(i) of this section shall bar recovery of those proceeds or that benefit by any other person.

\* \* \* \* \*

[FR Doc. 2011-31870 Filed 12/12/2011 at 8:45 am; Publication Date:  
12/13/2011]